

1 lie in responding to a petition for extension of time.

2 Some of those, we were successful. Some of those
3 were rejected subsequently by the Commission and the Court
4 of Appeals. But that didn't make our pleading of those
5 things any less valid from the point of view of we believe
6 that to be the law. We believed it then and we stated it.
7 And on our opposition appended.

8 Is that your question?

9 MR. BLOCK: You have answered the question.

10 BY MR. BLOCK:

11 Q The first time you heard from the Commission in
12 any form that rejected those views was in the Daniels
13 letter; is that correct?

14 A The Daniels letter was unrelated to any of this.
15 The Daniels letter dealt with a different kind of situation
16 entirely. It dealt with somebody writing to the Commission
17 and the Commission saying you can't give them any
18 information.

19 We were not responding to Press's objection on the
20 basis that this was a restricted or unrestricted proceeding.

21 Q Let me cut you off here because I think you are
22 going beyond the question. Let's just get the questions
23 answered.

24 Daniels letter makes a conclusion that the --
25 citing the reconsideration petition, that the proceeding is

1 restricted. One way to read the Daniels letter is to
2 conclude that the Commission staff, the OMD, concluded that
3 this was a formal enough petition to invoke 1.1208.

4 You didn't look at that, you didn't go back to
5 look at the pleadings to see whether or not there was any
6 basis for that conclusion?

7 A That would have had no bearing whatsoever --

8 Q Yes or no.

9 Q -- on the pleadings.

10 Q Yes or no.

11 MR. EISEN: Well --

12 THE WITNESS: No.

13 MR. BLOCK: No further questions.

14 JUDGE CHACHKIN: All right, do you have anything
15 further at this time?

16 MR. EISEN: No.

17 MR. BLOCK: No, Your Honor.

18 JUDGE CHACHKIN: You are excused, Ms. Polivy.

19 THE WITNESS: Thank you.

20 (Witness excused.)

21 MR. EISEN: I guess I should move for the
22 admission of Rainbow Broadcasting Exhibit 1 into evidence at
23 this point.

24 JUDGE CHACHKIN: One? Yes.

25 Any objection to receipt of Rainbow Exhibit 1?

1 MR. SILBERMAN: No, Your Honor. We just raise
2 with Mr. Eisen informally that page 1 of the exhibit is a
3 bit unclear, and Mr. Eisen has said he will get a clearer
4 copy at some point.

5 MR. EISEN: Sure.

6 MR. SILBERMAN: But we have no objection to the
7 admissibility of this exhibit?

8 MR. COLE: I have no objection, Your Honor.

9 JUDGE CHACHKIN: All right, Rainbow Exhibit 1 is
10 received.

11 (The document referred to,
12 having been previously marked
13 for identification as Rainbow
14 Exhibit No. 1, and was
15 received in evidence.)

16 MR. EISEN: Your Honor, we would also like the
17 opportunity to put into the record Ms. Polivy responses to
18 pleadings that were referenced today that Press filed.

19 For instance, the opposition, the opposition to
20 Press's petition for reconsideration that was filed on --

21 JUDGE CHACHKIN: If it goes to the issues in this
22 case. If it doesn't, it's irrelevant.

23 MR. EISEN: Well, I think it does. It addresses
24 questions that Ms. Polivy was asked about, the standing and
25 her belief as to whether or not the contracts at the

1 Commission were valid and not in violation of any rules;
2 formality as opposed to informality to substantiate some
3 things she said in the record.

4 JUDGE CHACHKIN: Well, the fact that she stated it
5 in the pleading, I don't see how that substantiates. She
6 has given her testimony.

7 MR. EISEN: Well, only to the extent that it is
8 the permittee's position.

9 JUDGE CHACHKIN: Well, you could offer those
10 documents. I will review them.

11 MR. EISEN: All right.

12 JUDGE CHACHKIN: And listen to objections of the
13 parties.

14 MR. EISEN: Thank you, Your Honor.

15 JUDGE CHACHKIN: It's now 20 to four. Are we
16 going to be able to finish with Ms. Cook by four. I plan on
17 leaving at four.

18 MR. EISEN: If we start with her and hurry, we can
19 probably get a good deal of the direct in.

20 JUDGE CHACHKIN: All right, but just with the
21 understanding that we are stopping at four.

22 MR. COLE: And we are starting at nine?

23 JUDGE CHACHKIN: Nine?

24 MR. SILBERMAN: Nine?

25 MR. COLE: The record should show a note of

1 surprise in staff counsel's voice.

2 MR. SILBERMAN: Can we go off the record, Your
3 Honor?

4 JUDGE CHACHKIN: Yes, off the record.

5 (Discussion off the record.)

6 JUDGE CHACHKIN: Ms. Bush, please step over here
7 and raise your right hand.

8 Whereupon,

9 ANTIONETTE COOK BUSH

10 having been first duly sworn, was called as a
11 witness herein and was examined and testified as follows:

12 MR. EISEN: Your Honor, let me state that the
13 witness is represented by Ms. Sabin.

14 MS SABRIN: Your Honor, I am Amy Sabrin with the
15 law firm of Skadden, Arps. S-A-B-R-I-N.

16 JUDGE CHACHKIN: The witness has been subpoenaed,
17 is that correct?

18 MR. EISEN: No, the witness is appearing
19 voluntarily as part of our case.

20 JUDGE CHACHKIN: Well, there is a difference in
21 the rights of counsel when a witness is subpoenaed or the
22 witness appears voluntarily. But let's see what happens.

23 Go ahead, Mr. Eisen.

24 DIRECT EXAMINATION

25 BY MR. EISEN:

1 Q Would you state your name, please, and your
2 present address?

3 A Antoinette Cook Bush.

4 My home address? 3905 Joselyn Street, Northwest,
5 Washington, D.C. 20015.

6 Q And, Ms. Bush, how are you presently employed?

7 A I am a partner at the law firm of Skadden, Arps.

8 Q How long have you been a member of the bar?

9 A Since 1982.

10 Q Are you also a member of the Federal Communication
11 Commission's Bar?

12 A Yes.

13 Q And in the past have you practiced before the
14 Federal Communications Commission?

15 A Yes.

16 Q And do you presently practice before the Federal
17 Communication Commission?

18 A Yes.

19 Q Prior to your present position can you tell me how
20 you were employed?

21 A I was counsel for the Senate Committee on Commerce
22 and Transportation, and I was associated to the
23 Communications Subcommittee staff.

24 Q And can you tell me approximately how long you
25 were in that capacity?

1 A From -- well, from March of '87 through October of
2 1993.

3 Q Are you familiar with an entity called Rainbow
4 Broadcasting Company?

5 A Yes.

6 Q Can you tell me how you became familiar with
7 Rainbow Broadcasting Company, also referred to as RDC?

8 A Well, when I started practicing, I was an
9 associate first with the firm of Kirkland & Ellis here in
10 Washington, and Wiley Rein & Fielding then spun off from
11 Kirkland & Ellis. And to be honest with you, I can't
12 remember whether Rainbow Broadcasting became a client of
13 Kirkland & Ellis or Wiley, Rein & Fielding.

14 But Wiley, Rein & Fielding did represent Rainbow
15 Broadcasting.

16 Q Do you have any recollection with regard to what
17 you did in representing Rainbow Broadcasting Company?

18 A I don't have any specific recollection, but I was
19 an associate at the firm, and in the communications group,
20 and I do believe that I worked on the Rainbow proceeding at
21 the FCC. I was not the primary attorney responsible for the
22 matter. There were partners and other associates who worked
23 on it.

24 Q In June of 1993, did you maintain any professional
25 relationship with RDC?

1 A In June of -- no.

2 Q Are you familiar with Joseph Rey?

3 A Yes.

4 Q Have you had -- prior to June of 1993 -- contacts
5 with Mr. Rey?

6 A Yes.

7 Q What were the nature of those contacts?

8 A Primarily social.

9 Well, when I left the Wiley, Rein & Fielding firm
10 I was no longer involved with representation, so from that
11 point on all of my contacts were social.

12 Q Can you tell me what your duties were as counsel
13 to the Senate Committee?

14 A I was counsel on the Communication Subcommittee
15 staff and the Communications Subcommittee essentially
16 handled any legislation in the Senate that involved
17 communications. We have oversight of the Federal
18 Communications Commission, the Corporation for Public
19 Broadcasting, and National Telecommunications Information
20 Administration.

21 Q In your capacity with the Senate Committee, did
22 you have occasion to contact staff persons at the FCC from
23 time to time?

24 A Yes.

25 Q During the time that you were with the Senate, can

1 you estimate the number of times that you contacted the FCC?

2 A They are probably too numerous to specify because
3 I talked to staff at the FCC on a wide range of matters.

4 Q What matters would they generally include?

5 MR. BLOCK: Objection. We have gone on for some
6 time on this. I don't know what the relevance of this
7 past --

8 JUDGE CHACHKIN: Overrule the objection.

9 THE WITNESS: My contact with the FCC would range
10 from seeking advice on communications matters, legislation
11 that might have been pending, meetings with them about
12 issues relating to the Federal Communications Commission
13 itself, inquiries that I may receive from people from the
14 outside. I would call the Commission and ask questions.

15 BY MR. EISEN:

16 Q In your contacts with the Commission were you ever
17 told that one of the proceedings that you inquired about was
18 restricted?

19 A Yes.

20 Q And what would happen in those circumstances?

21 A We would -- I would end the conversation with
22 whomever I was talking to.

23 Q Are you familiar with Margot Polivy?

24 A Yes.

25 Q Can you describe what your relationship has been

1 with Ms. Polivy?

2 A Well, I know her as a fellow practitioner before
3 the FCC. We participated in cases representing different
4 parties before the Commission. And Margot also represented
5 me when I filed an application before the Commission.

6 Q What you just described, the relationship with Ms.
7 Polivy, was that all true before June of 1993?

8 A Yes.

9 Q In June of 1993, did you have any knowledge about
10 the status of the Rainbow Broadcasting Company application?

11 A Well, in June of 1993, I did receive a call from
12 Margot indicating that a request for an extension of their
13 construction permit had been denied by the FCC.

14 Q And do you recall in what part of June that
15 occurred?

16 A From reading the pleadings, it would have been in
17 the middle of June.

18 Q Can you recall specifically what you and Ms.
19 Polivy discussed at that time?

20 A I don't have a specific recollection as to the
21 conversation, but I recall that Margot was upset that the
22 construction permit had been -- he request for an extension
23 had been denied, and I believe she asked me to call the FCC
24 and find out why it had been denied.

25 Q Did she tell you the reason why it had been

1 denied?

2 A I don't recall what she said. I do recall her
3 indicating she was upset because there had been a number of
4 pleadings that had been filed with the Commission and that
5 had been outstanding for some period of time before they had
6 been acted on by the Commission.

7 Q At that time, as of June of 1993, did she show you
8 any correspondence from the Commission that related to --

9 A I did not review any document.

10 Q Did you discuss the status of RBC with any RBC
11 principal after Ms. Polivy spoke to you about what had
12 happened at the Commission?

13 A I don't have any recollection of having any
14 discussion. The only person I remember talking to was
15 Margot.

16 Q Did Ms. Polivy explain to you that at the time, in
17 June of 1993, why she asked you specifically to contact the
18 Commission?

19 A No, she did not.

20 Q Did you have any independent belief as to why she
21 was requesting you to contact the Commission?

22 A Well, I mean, I often got calls from people who
23 were concerned or upset with a decision by the Commission,
24 and I would call and make an inquiry as to what the
25 Commission had decided and what, if any, action could be

1 taken by the parties. It's fairly routine for that to
2 happen.

3 Q And I think you referenced that Ms. Polivy
4 mentioned some pleadings with the Commission that had not
5 been acted on.

6 Did she specifically tell you what those pleadings
7 were?

8 A She may have, but I don't have an independent
9 recollection of those right now.

10 Q Did Ms. Polivy tell you at that time who it was --
11 let me strike that.

12 Did you know at that time whether or not any
13 particular party had opposed RBC's application?

14 A You mean their request for an extension of the
15 construction permit?

16 Q Yes.

17 A I don't have any recollection.

18 Q And did you in fact contact the Commission?

19 A Yes. I called the Mass Media Bureau and asked for
20 Mr. Roy Stewart.

21 Q And do you recall when approximately that was?

22 A I assume that it was within a day of talking to
23 Margot, but I don't have a specific recollection as to what
24 the date was.

25 Q And this was a telephone call?

1 A Yes.

2 Q And what did you and Mr. Stewart discuss?

3 A I indicated to Mr. Stewart that I was calling him
4 about the Rainbow Broadcasting request for an extension of
5 their construction permit which had been denied. He did not
6 seem to have any recollection of or any knowledge of that.
7 And I told him that Rainbow Broadcasting Company was the
8 applicant who had challenged the, or how had defended the
9 minority ownership policy that went all the way up to the
10 Supreme Court. He still didn't have any recollection of it,
11 and said that he would have somebody call me back.

12 Q Was there any reason why you referenced to Mr.
13 Stewart the minority ownership policy and the Supreme Court
14 decision?

15 A in an effort to jog his memory as to that -- what
16 the case specifically was.

17 Q And did Mr. Stewart tell you anything else?

18 A No, he said he wasn't aware of any of the action,
19 and he didn't know anything about it at the time.

20 Q Did he tell you he would do anything?

21 A He said that he would have somebody call me back.
22 That's all.

23 Q In what capacity did you call Mr. Stewart?

24 A As counsel to the Senate Committee.

25 Q And as committee counsel, how frequently were you

1 in contact with Mr. Stewart of matters relating to
2 broadcasting?

3 A Fairly frequently. I mean, I don't know
4 specifically how many times I talked to him but, you know, I
5 talked to the FCC about a lot of issues, the Cable Act
6 implementation, the Cable Act.

7 Q After your discussion with Mr. Stewart did you
8 contact Ms. Polivy?

9 A I believe I did.

10 Q Do you recall what you told her?

11 A I don't have a specific recollection but the only
12 thing I could have told her was that Roy didn't know
13 anything, and somebody else was going to call me back.

14 Q Did Ms. Polivy ask you at that time to do anything
15 further?

16 A No.

17 Q And in fact did any FCC staff person subsequently
18 contact you after the conversation with Mr. Stewart?

19 A Yes. Clay Pendarvis called me.

20 Q Do you recall approximately when that was?

21 A Again, I don't specifically recall, but I believe
22 it was within a 24-hour period when I talked to him.

23 Q Again, this was in a telephone discussion?

24 A A telephone discussion, yes.

25 Q How long was the discussion with Mr. Pendarvis?

1 A It was very brief.

2 Q Did Mr. Pendarvis provide you with any information
3 about the RBC proceedings?

4 A He indicated that they had denied the request for
5 an extension of the construction permit. I believe that I
6 indicated to him that the applicant felt that there was
7 additional -- that there had been rulings that the
8 Commission hadn't acted on for a very long period of time.
9 And he indicated, I think, that there was additional
10 information that if they wanted to submit to the Commission,
11 that they should file a petition for reconsideration.

12 Q Had you and Ms. Polivy discussed anything about
13 reconsideration prior to Pendarvis' contact?

14 A I don't know whether we did or not.

15 Q Did Mr. Pendarvis tell you that anything about
16 your contact was improper?

17 A No, or did Mr. Stewart.

18 Q And after you spoke to Mr. Pendarvis, did you
19 contact Ms. Polivy?

20 A Yes.

21 Q And what did you tell her?

22 A What Mr. Pendarvis had said, which is if they felt
23 there was additional information that the Commission should
24 consider, that they should file a petition for
25 reconsideration.

1 Q And between June and July 1 of 1993, did you
2 discuss the status of Rainbow Broadcasting Company's
3 applications with any other staff persons at the Commission?

4 A No.

5 Q Did you subsequently become aware that the
6 Commission's Mass Media Bureau had reconsidered the denial
7 of the extension?

8 A Yes.

9 Q How did you learn that?

10 A I don't recall specifically.

11 Q Do you recall approximately when you learned that?

12 A During the summer. You know, August comes to mind
13 but I can't be specific.

14 Q Did you ever see the Commission decision that
15 granted the reconsideration?

16 A I don't believe that I ever did.

17 MR. EISEN: I have nothing further, Your Honor.

18 JUDGE CHACHKIN: All right. It's 4:00. I think
19 we will recess now until 9 a.m. tomorrow morning, and start
20 with cross-examination.

21 (Whereupon, at 4:00 p.m., the hearing was
22 recessed, to reconvene at 9:00 a.m., on Wednesday, June 26,
23 1996.)

24

25

REPORTER'S CERTIFICATE

FCC DOCKET NO.:


CASE TITLE: RAINBOW BROADCASTING COMPANY

HEARING DATE: June 25, 1996

LOCATION: Washington, D. C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Federal Communications Commission.

Date: 6/25/96

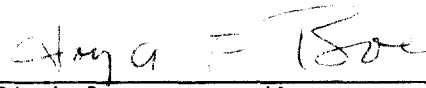


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I hereby certify that the proceedings and evidence were fully and accurately transcribed from the tapes and notes provided by the above named reporter in the above case before the Federal Communications Commission.

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I hereby certify that the transcript of the proceedings and evidence in the above referenced case that was held before the Federal Communications Commission was proofread on the date specified below.

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